IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

CRP.No. 603 of 2005()

POP.14/2001 of I ADDL.SUB COURT, THRISSUR

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REVN. PETITIONER: RESPONDENT.

KUNNATH TEXTILES, NEAR CIVIL LINE,
AYYANTHOLE DESOM AND VILLAGE, THRISSUR TALUK,
REPRESENTED BY MANAGING PARTNER, K.P.ANTONY,
S/O.KUNNATH THOMA.

BY ADV. SRI.S.V.BALAKRISHNA IYER

RESPONDENTS: PETITIONER.

K.JAYARAM, CANVASSING AGENT,
S/O.KANDAYATH AMMINI AMMA, PURANATTUKARA DESOM
AND VILLAGE, THRISSUR TALUK.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

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C.R.P.No. 603 of 2005

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Dated this the 13th day of April, 2007

O R D E R

The respondent in P.O.P No.14/2001 on the file of the First Additional Sub Court, Thrissur, is the revision petitioner. The respondent herein, K.Jayaram, had filed a petition under order XXXIII Rule 1 of Civil Procedure Code, stating that he had no sufficient means to pay the court fee and so he may be permitted to file a suit as an indigent person. The suit was filed for an amount of Rs.3,73,650/-. The revision petitioner herein contended, through the counter filed before the court below, that the plaintiff/petitioner had got sufficient means to pay the court fee before the court below, and the revision petitioner is also entitled to point out the same to the court, which is to consider it. However, the court below, after going through the evidence of PW.1, the indigent person, and RW.1, the revision petitioner herein, had allowed the petition and permitted the petitioner to pursue with the suit, on numbering the same, as a

regular suit. The said order is under challenge, before this Court.

2. The contention of the counsel for the revision petitioner is that the plaintiff-petitioner had sufficient means. He is owning a motor bike and he had also received an amount of Rs.2,22,600/-, even according to him, from the revision petitioner. The further submission of the counsel is that, although the court fee, to be paid, is due to the State, yet the defendant is entitled to point out the same to the court and, in such event, the court is bound to consider the same together with the report of the Government.

3. In the case at hand, no report had been filed by the Government. It was during the pendency of the filing of the report by the Government that the matter had been disposed of by the court below after considering the evidence, as discussed above. In such circumstances, without entering into any discussion on the merit of the matter, I am of the view that an opportunity be given to the parties to adduce evidence, if any, to show that the petitioner-plaintiff has got sufficient means to pay the court fees, or otherwise. The court shall also call for the

report of the Government, regarding the means of the petitioner, and then proceed with the matter, according to the law. To enable the same, the impugned order is set aside.

4. It is submitted during the hearing that the suit is now pending before the sub court and the parties are in attendance before the lower court.

5. On receipt of the report of the Government and in the light of the oral evidence of PW.1 and RW.1, together with the other evidence, if any, that may be adduced by the parties, if the court finds that the plaintiff in the suit is having sufficient means, he shall be directed to remit the court fee and if found otherwise, the suit shall be proceeded with, as if the plaintiff is an indigent person.

With the above directions, this revision petition is allowed and the matter is remitted to the court below.

(J.M.JAMES)
Judge

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